MOHD. YUSOF HJ. ABDULLAH

v.

BANK BUMIPUTRA (M) BHD.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[ORIGINATING SUMMONS NO. S7-24-2383-89]
9 FEBRUARY 1990

LAND LAW: *Interlocutory injunction - Declaratory order - Whether procedural rule made under F.M.S. Enactment affect National Land Code provisions - Sections 260, 261 National Land Code 1965 - Selangor Auction Sales Rules.*

On 17 November 1989 the plaintiff applied for a declaratory order that the sale of land vide a public auction was null and void. The plaintiff also made an *ex parte* application for an interlocutory injunction to restrain defendants from any manner of dealings with the property.

On 29 November 1989 an interlocutory injunction was granted with general liberty given to both parties to apply. On 11 December 1989 the defendants applied to set aside the interlocutory injunction.

Held:

[1] The contention by the plaintiff that the public auction conducted by the Auctioneer contravened r. 4 of the Selangor Auction Sales Rules (the rules) is without merit as:

(a) the rules were made under the FMS Auction Sales Enactment Cap. 81 to regulate *inter alia* licensing of auctioneers and the general conduct of sales by public auction;

(b) it does not purport to regulate the public auction of property charged under the National Land Code 1965 (NLC) (see s. 265).

(c) The sale of such a charged property is provided for under s. 265 of the NLC and is to be carried out by the Pentadbir who is empowered to carry out such a sale with or without the assistance of any licensed auctioneer.

[2] Rule 4 is only a procedural rule and cannot apply in respect of public auction of properties ordered by the Court or the Pentadbir under the NLC because a charged property is carried out under the direction of the Senior Assistant Registrar of the Court or a Pentadbir.

[3] Neglect of r. 4 would not work serious general inconvenience and injustice to persons who have no control over those entrusted with the duty.

[Interlocutory injunction dismissed with costs.]

Case referred to:
Montreal Street Railway Company v. Normandie [1917] AC 170

Legislation referred to:
National Land Code 1965, ss. 260, 261, 262, 265(1)(a)

Other source referred to:
Maxwell on Interpretation of Statutes, 11th Edn. at p. 364

For the plaintiff - Anoop Kumar; M/s. Yusof Abdullah & Partners
For the defendants - Shamsul Bahrain; M/s. Skrine & Co.

JUDGMENT

Lim Beng Choon J:

The plaintiff in this action applied by way of an Originating Summons on 17 November 1989 for a declaratory order that the sale of the land held under G.M. 373, Lot 2779, Mukim of Setapak, Selangor (the property) vide public auction on 6 September 1989 is null and void. He also asked for general damages and costs. Simultaneously he also made an *ex parte* application by summons-in-chambers for an interlocutory injunction to restrain the defendants, Bank Bumiputra Berhad or their servants or agents from selling or transferring or in any manner dealing with the property.

The aforesaid application of the plaintiff was accompanied by a certificate of urgency indicating that as the defendant would be completing the sale of the property on or before 6 December 1989 with the purchaser of the property who bought it at the public auction held on 6 September 1989, it was necessary for the plaintiff to be granted the interlocutory injunction in order to prevent injustice and irreparable hardship to the plaintiff. As a result, an interlocutory injunction was granted by this Court on 29 November 1989 which was made valid for two weeks with general liberty given to both parties to apply.

On 11 December 1989 the defendants applied to set aside the interlocutory injunction on a number of grounds as set out in their application as well as the affidavit in support affirmed by their branch manager.

In his affidavit in support of his originating summons and his affidavit in support of his application for an interlocutory injunction the plaintiff had also raised a number of grounds to sustain both his applications.

At the hearing of the defendants' application on 4 January 1990 to set aside the interlocutory injunction the Counsel for the plaintiff in opposing the defendant's application relied only on one ground to sustain the plaintiff's case and all the other remaining grounds as set out in the plaintiff's affidavits were abandoned. The one ground relied on by the Counsel was that as the auctioneer who conducted the auction held on 6 September 1989 had failed to comply with r. 4 of the Selangor Auction Sales Rules (Sel. Gaz. Not. No. 4370/26) the whole auction of the property was therefore a nullity and void in law.

It is to be noted that the said r. 4 provides:

> Every notice of sale shall be handed to the officer in charge of the police district where the property or any of it is situated at least five clear days before the time appointed for the sale.

It is common ground that the auctioneer had not complied with this rule before he conducted the public auction of the property.

In considering the contention of the Counsel for the plaintiff, I observe that he is not disputing that the application for an order for sale of the property was properly made by the Pentadbir Tanah Daerah Gombak (the Pentadbir) pursuant to s. 260 of the National Land Code (the NLC). He is also not disputing that the Pentadbir had held a proper inquiry under ss. 261 and 262 of the NLC before he made the order for sale. All the requirements set out in ss. 263 and 264 of the NLC had also been followed by the Pentadbir.

It is important to bear in mind that under s. 265(1)(a) of the NLC the sale of the property was to be held under the directions of the Pentadbir. It is useful to set out the provisions of that section which are as follows:

265(1) Where a sale is held pursuant to an order under s. 263:

(a) the sale shall take place under the direction of the Land Administrator, who may take the assistance thereat of any licensed auctioneer;

Moreover under subsection (4) of s. 265 of the NLC, the purchaser of the property is entitled, upon payment to the Pentadbir of the full amount of the purchase price, received from the latter:

(a) a certificate in Form 16I that the land or lease in question has been sold to him under the authority of this Act (which certificate shall, as provided by s. 267, be registrable by the purchaser as if it were an instrument of dealing); and

(b) if deposited with the Land Administrator pursuant to para. (b) of sub-section (2) of s. 264, the issue document of title to the land or, as the case may be, duplicate lease.

Reverting to the contention that the failure to comply with r. 4 of the Auction Sale Rules would render the sale a nullity and void in law, the first thing to take note of is that the rules were made under the FMS Auction Sales Enactment Cap. 81. This Enactment is to regulate *inter alia* the licensing of auctioneers and the general conduct of sales by public auction. It does not purport to regulate the public auction of property charged under the NLC. The sale of such a charged property is under s. 265 of the NLC which is to be carried out by the Pentadbir who is empowered to carry out such a sale with or without the assistance of any licensed auctioneer. Failure to comply with the said r. 4 cannot to my mind render the sale null and void so long as all the necessary requirements of the relevant sections of the NLC governing such sale have been complied with.

In any event the said r. 4 is only a procedural rule governing auction sale of movable or immovable properties conducted under the direction of a licensed auctioneer. It cannot apply in respect of public auction of properties ordered by the Court or the Pentadbir under the NLC simply because a public auction of charged property is carried out under the direction of the Senior Assistant Registrar of the Court or a Pentadbir as the case may be.

What is more important is that where the prescriptions of the said r. 4 relate to performance of a procedural duty and where the invalidation of acts done in neglect of them would work serious general inconvenience and injustice to persons who have no control over those entrusted with the duty, yet not to promote the essential aims of the legislature, such prescriptions cannot affect the validity of the acts done in disregard of them. Thus in Maxwell on Interpretation of Statutes 11th Edn. at p. 364 it is stated:

> A strong line of distinction may be drawn between cases where the prescriptions of the act affect the performance of a duty and where they relate to a privilege of power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature. But when a public duty is performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

In the case of *Montreal Street Railway Company v. Normandie* [1917] AC 170 at 175 the Privy Council adopts a similar approach.

I am satisfied from the above discussion that the contention of the plaintiff is without any merit. The interlocutory injunction granted by me on 29 November 1989 which has been extended pending the disposal of the defendants' application to set it aside is dissolved with costs.

Also found at [1991] 1 CLJ 370